

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 CIAE-00 COME-00

FRB-03 INR-07 NSAE-00 USIA-06 XMB-02 OPIC-03 LAB-04

SIL-01 INT-05 L-03 H-02 DODE-00 PA-01 PRS-01 /090 W

----- 105452

P 062045Z AUG 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC PRIORITY 6207

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EO 11652: NA

TAGS: EINV, EGEN, PFLOR, PE

SUBJ: MARCONA NATIONALIZATION - MINPECO LAMBASTES MARCONA

FOR "CAMPAIGN OF MISINFORMATION AGAINST PERU"

REF: LIMA 6129

1. SUMMARY: LIMA PRESS GAVE HEAVY COVERAGE AUGUST 5 TO COMMUNICATION SENT BY MARCONA TO ITS PURCHASERS AND TO RESPONSE BY MINEROPERU COMERCIAL (MINPECO). OPERATIVE PORTION OF FORMER STATES THAT ANY ATTEMPT BY OTHERS TO BUY ORE FROM PERU AND TO SELL IT TO BUYERS IN SUBSTITUTION FOR CONTRACTS IN FORCE BETWEEN MARCONA AND THESE BUYERS WOULD RESULT IN LEGAL PROCEEDINGS BY MARCONA TO OBTAIN ADEQUATE COMPENSATION. A SIMILAR STATEMENT WAS MADE WITH RESPECT TO SHIPPING. MINPECO'S RESPONSE CONTENDS THAT THE NATIONALIZATION OF MARCONA NULLIFIED ALL SHIPPING AND SALES CONTRACTS WITH THIRD PARTIES. MINPECO OFFERS TO ASSUME ANY RISKS PURCHASERS MIGHT RUN BY BUYING DIRECTLY FROM MINPECO. MINPECO STATEMENT REITERATES STANDARD GOP CHARGES AGAINST MARCONA, BUT ALSO NOTES THAT MARCONA HAS A "RIGHT TO PROCEED WITH ITS CLAIMS THROUGH THE PERUVIAN LEGAL SYSTEM". PUBLICATION OF STATEMENTS WAS ACCOMPANIED BY ANTI-MARCONA HEADLINES AND WAS LIMITED OFFICIAL USE

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FOLLOWED BY ADVERSE "MAN-IN-STREET" INTERVIEWS THE NEXT DAY.

TV TREATMENT WAS ALSO HIGHLY CRITICAL OF MARCONA.

2. TONE OF STATEMENT INDICATES HARD-LINE ATTITUDE, AS WELL AS PROBABLE CONCERN OVER HIERROPERU'S ABILITY TO SELL AND SHIP ITS ORE. THIS ANNOUNCEMENT, HOWEVER, DOES NOT PRECLUDE COMPLETELY THE POSSIBILITY THAT CONSEQUENCIES OF GOP'S RASH ACT MAY BE SINKING IN AND THAT GOP MAY MAKE AN EFFORT TO GET SOME FORM OF DISCUSSIONS BETWEEN PARTIES INITIATED. END SUMMARY.

3. MARCONA'S LETTER TO RECEIVERS - LIMA PRESS CARRIED STATEMENT WITHOUT A DATE, ALTHOUGH JAMES COMPTON INFOMS US THAT IT IS THE TEXT OF MARCONA'S MESSAGE TO PURCHASERS OF JULY 25. IT CONTAINS THE FOLLOWING ESSENTIAL POINTS:

A) MARCONA HAS BEEN NEGOTIATING WITH GOP SINCE LAST FALL AND ALTHOUGH THESE NEGOTIATIONS WERE CARRIED OUT IN CORDIAL CLIMATE, NO AGREEMENT WAS REACHED;

B) THE GOP CLAIMS THAT MARCONA HAD NOT FULFILLED ITS CONTRACTUAL OBLIGATIONS IN PERU. THESE CLAIMS HAD NEVER BEEN DISCUSSED WITH MARCONA NOR DOCUMENTED BY THE GOP;

C) CONTRACTS FOR THE PURCHASE OF IRON ORE HAVE BEEN MADE WITH MARCONA INTERNATIONAL S.A., WHICH HAS CONTRACTS FOR THE PURCHASE OF ALMOST ALL MARCONA MINING CORPORATION'S PRODUCTION. ANY ATTEMPT BY OTHER ORGANIZATIONS TO BUY THIS IRON OUTSIDE OF MARCONA INTERNATIONAL'S CONTRACTS WILL RESULT IN MARCONA'S INITIATING ALL NECESSARY LEGAL ACTION TO OBTAIN ADEQUATE COMPENSATION;

D) ALSO, MARCONA INTERNATIONAL AND MARCONA CARRIER, LTD. HAVE CONTRACTS TO TRANSPORT MOST OF MARCONA'S PRODUCTION. ANY ATTEMPT BY OTHER SHIPPING COMPANIES OR AGENTS TO TRANSPORT THIS IRON WILL RESULT IN SIMILAR LEGAL ACTION;

E) "MARCONA HOPES TO RECEIVE CLARIFICATION REGARDING THE TERMS AND CONDITIONS OF THE EXPROPRIATION IN THE NEXT FEW DAYS."

4. MINPECO COMMUNIQUE - THE MINPECO COMMUNIQUE MAKES THE FOLLOWING POINTS:
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A) GOP HAS RIGHT OF OWNERSHIP TO ALL MATERIALS MINED UNDER PERUVIAN LAW. NOW THAT MARCONA'S CONTRACT HAS BEEN RECINDED, MARCONA HAS NO RIGHTS OVER THE MINERALS FROM ITS MINES AND NO RIGHT TO OPPOSE GOP'S SALES ACTIVITIES; B) ACCORDING TO PERUVIAN LAW, GOP HAS SOVEREIGN RIGHT TO EXPROPRIATE PROPERTY WHEN THIS IS NECESSARY TO FULFILL THE STATE'S GOALS. THEREFORE, MARCONA WAS NATIONALIZED; C) NOTWITHSTANDING UNFOUNDED LEGAL POSITION TAKEN BY MARCONA (BECAUSE OF THE SERIOUS

DAMAGES DONE TO THE STATE BY MARCONA), GOP TRIED TO NEGOTIATE A SETTLEMENT. THIS FAILED BECAUSE OF THE UNACCEPTABLE CONDITIONS IMPOSED BY MARCONA AND BECAUSE OF THE "CONSPIRACY" BETWEEN MARCONA CORP. AND OTHER COMPANIES FOR THE SALE AND TRANSPORTATION OF MINERALS. THIS SYSTEM PREVENTED GOP FROM RECEIVING GENUINE PROFITS EARNED BY THE SALES OF PERUVIAN ORE; D) THE SALES CONTRACTS WHICH MARCONA MINING HAD WITH SAN JUAN S.A. AND MARCONA INTERNATIONAL WERE INJURIOUS TO PERU. THE GOP AND MINPECO CANNOT ACCEPT THESE CONTRACTS BECAUSE OF THE UNFAIR PROFITS WHICH ACCRUED TO THESE COMPANIES; E) WITH THE LEGAL RESCISSION OF MARCONA'S CONTRACT, THE COMPANY LOST ALL RIGHTS OVER PERUVIAN IRON AND THUS SALES CONTRACTS FOR THIS IRON ARE NOT LONGER IN FORCE; F) MARCONA MINING AND MARCONA INTERNATIONAL HAVE THE RIGHT TO PROCEED BY RELEVANT LEGAL CHANNELS ("TIENEN EXPEDITO SU DERECHO A ACCIONAR EN LA VIA JUDICIAL PERTINENTE"), BUT MINPECO RE-ITERATED THAT THE COMPANIES HAVE LOST ALL RIGHTS OVER THE MINERALS FROM THE MARCONA MINES; G) MINPECO SEEKS TO INITIATE CONVERSATIONS TO CONTINUE SUPPLYING IRON ORE TO STEEL MILLS. MINPECO IS PREPARED TO GUARANTEE THAT IT HAS TITLE TO THE MINERALS IT SELLS AND TO ASSUME ANY RISK THAT COULD ARISE FROM ANY ARBITRARY ACTION BY MARCONA. COMMUNIQUE IS SIGNED BY AUGUSTO PRICE, EXECUTIVE PRESIDENT, AND ALBERT RUBINA, GENERAL MANAGER, MINPECO.

5. PERUVIAN PRESS CARRIED BANNER HEADLINES WITH TITLES VARYING FROM "MINPECO RESPONDS TO DEFIANT ATTITUDE OF MARCONA" TO "TRANSNATIONAL MARCONA INITIATES ANTI-PERUVIAN OFFENSIVE." OFFICIAL GAZETTE STATED "MINPECO RESPONDS TO CAMPAIGN OF MISINFORMATION OF MARCONA." EMBASSY IS FURNISHING FULL TEXTS OF MARCONA AND MINPECO STATEMENTS.

6. COMMENT: MINPECO'S PUBLICATION OF MARCONA'S LETTER LIMITED OFFICIAL USE

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OF JULY 25, SENT PRIVATELY TO RECEIVERS, IS AN INVASION OF PRIVACY SINCE, AS FAR AS WE KNOW, MARCONA DID NOT RELEASE THIS LETTER TO THE PUBLIC. MINPECO'S LETTER APPEARS TO REFLECT MILITANCY IN TERMS OF ITS LEGAL ARGUMENTS ON THE ONE HAND, AND TACIT ADMISSION ON THE OTHER THAT IT MAY BE FACED WITH A SERIOUS PROBLEM IN SELLING ITS ORE. THUS, IT ATTEMPTS TO MAKE THE CASE TO RECEIVERS THAT THEY SHOULD NOT FEAR LEGAL ACTION ON THE PART OF MARCONA. MENTION OF POTENTIAL MARCONA APPEAL THROUGH PERUVIAN COURT PROCESS IS FIRST OFFICIAL GOP STATEMENT THAT MARCONA HAS ANY RECOURSE LEGALLY WITHIN PERU. ARGUMENTS EXPRESSED BY MINPECO ALSO FOLLOW THE LINE REPORTED REFTEL WE HAD EXPECTED WOULD BE GOP LEGAL POSITION.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NATIONALIZATION, PRESS COMMENTS, MINING INDUSTRY, CONTRACTS, THREATS
Control Number: n/a
Copy: SINGLE
Draft Date: 06 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975LIMA06326
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750271-1075
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750878/aaaacqup.tel
Line Count: 168
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 LIMA 6129
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 12 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 SEP 2003 by CunninFX>; APPROVED <20 OCT 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MARCONA NATIONALIZATION - MINPECO LAMBASTES MARCONA FOR "CAMPAIGN OF MISINFORMATION AGAINST PERU"
TAGS: EINV, EGEN, PFOR, EMIN, PE, US, MARCONA
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006